IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8579 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PATEL MADHAVIBEN DILIPKUMAR

Versus

DY.SALETAX COMMISSIONER DIVISION 2

Appearance:

1. Special Civil Application No. 8579 of 1998

MS SADHANA SAGAR for Petitioner No. 1

MR PD BHATE, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 24/02/2004

ORAL JUDGEMENT

1. The grievance of the petitioner is that despite the fact that she has been working as Water Server

(Class-IV employee) on part-time basis in the Sales Tax Department of the State Government since 8th September, 1989 till this date, her services have not been regularized. She has averred that she was required to work for 8 hours daily. It is her say that initially at the time of appointment she was being paid a fixed salary at the rate of Rs.900/= p.m. She has made a grievance that inspite of the circular dated 26th December, 1980 whereby the heads of the departments of the Government have been directed to absorb part-time employees working on permanent posts for more than three years on permanent basis, she has not been appointed on permanent basis as permanent employee. She has also made grievance that other Water Servers, who were junior to her have already been appointed as permanent employees on the said posts, but she has been left out. She has further averred that she has expressed her grievance by writing letters dated 18th March, 1993, 22nd October, 1995 and yet another letter dated 13th September, 1997 to the concerned authorities, but those letters have not been replied to. She has also submitted that no reason for not appointing her on the said post on permanent basis is made known to her. In such circumstances, she had no other alternative but to approach this Court by way of this petition. Her prayer is that the respondents be directed to regularize her services and to make her permanent employee in the Sales Tax Department.

2. The respondents have filed affidavit-in-reply contesting this petition. In the said affidavit it is averred that circular dated 26th December, 1980 has been subsequently stayed by issuing another circular in the year 1995 on account of the acute financial crunch suffered by the State Government. Vide the 1995 circular direction not to make any fresh appointment on permanent basis was given to various departments. It was, therefore, not feasible to accede to the request of the petitioner.

3. Having heard Miss Sadhna Sagar, learned advocate appearing for the petitioner and Mr. P.D. Bhate, Ld. AGP for the respondents and having gone through the record of the petition, it is clear that the petitioner had been appointed on temporary basis as Water Server in the Sales Tax Department on 8th September, 1989. There is no challenge to her appointment on the ground that it was done without following due procedure. I, therefore, take it that the said appointment even on the temporary basis was in accordance with the norms laid down for the said purpose and after due compliance with the procedure.

3.1. The question that now remains to be decided is that despite the circular dated 26th December, 1980 why the petitioner's appointment on the post of Water Server was not made on permanent basis. There is no dispute that the post is a permanent post. The very fact that the petitioner has been working daily for 8 hours shows that there was a need of full-time Water Server in the said department. Further that the circular of 26th December, 1980 itself prescribes that part-timer working in the permanent post for more than 3 years has to be regularized on that post, if the vacancy is available. It may also be noted here that similar controversy had arisen in Special Civil Application No. 8917 of 1998 and its cognate matters wherein both the aforesaid circulars i.e. circular dated 26th December, 1980 and of 21st August, 1995 have been considered and thereafter the petitions have been allowed and appropriate directions for considering cases of those petitioners for regularizing the services have been given. Since the identical question has been involved in this petition, the same is required to be allowed.

4. The respondents are, therefore, now required to be directed that irrespective of the Circular of 21st August, 1995, they shall consider the case of petitioner for appointment on permanent post in Class-IV and if the permanent post is found vacant, she shall be appointed on the same in accordance with her claim in the matter of seniority and the Regulations and if otherwise, she is not ineligible. Appointment should not be denied on the ground of overage or on the ground that it may amount to giving a back-door entry. This exercise to be carried out as early as possible, but in any case, not later than 30th May, 2004. If need be, the petitioner can make appropriate representation, which will be considered in light of this judgment and in particular the directions given therein.

The result is that this petition is partly allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

[AKSHAY H. MEHTA, J.]

* Pansala.